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IN THE

Supreme Court of the United States

Term, A. D. 1959

No. 826

Wengenroth and Jureczki Cases As Docketed
By Court Of Criminal Appeals Of Texas

PAUL WENGENROTH AND EMIL JURECZKI
PETITIONERS

versus

THE STATE OF TEXAS
RESPONDENT

MOTION TO FILE AND PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS, AND/OR PETITION FOR WRIT OF NOBIS CORAM IN THE ALTERNATIVE, SAID BENCH OF SAID COURT OF CRIMINAL APPEALS BEING LOCATED AT AUSTIN, TEXAS

SUPPLEMENTAL BRIEF OF APPELLANTS

Submitted by

Floyd Dure James
Majestic Bldg.
San Antonio, Texas
Attorney for Petitioners

IN THE

Supreme Court of the United States

_____ Term, A. D. 1959

No. . . . . .

Wengenroth and Jureczki Cases, As Designated By Court Of Criminal Appeals Of Texas.

PAUL WENGENROTH AND EMIL JURECZKI,
PETITIONERS,

versus

THE STATE OF TEXAS,
RESPONDENT.

A MOTION TO FILE AND PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS, AND/OR PETITION FOR WRIT OF NOBIS CORAM, IN THE ALTERNATIVE, SAID BENCH OF SAID COURT OF CRIMINAL APPEALS BEING LOCATED AT AUSTIN, TEXAS

SUPPLEMENTAL BRIEF OF APPELLANTS

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT:

Now come Paul Wengenroth and Emil Jureczki in the said four indicated and entitled causes and herein present their supplemental brief, and as follows:

1. Appellants point to the transcript and show that consolidation of the said causes could be herein made, since the said four indicated cases in the courts below had the same words, instruments and pleadings, and if one set or copy could be used to represent all four cases, time, effort and expense could be saved, and if pages 2 to 16 represented all four cases, then the pages, 17 to 31, 32 to 46 and 47 to 61 could be withheld from the printer, if it is noted that the only bond, page 20-21, is different in amount, being $19.50 more than the three other bonds.

2. That part of transcript, pages 62 to 75, should be withheld from the printed transcript, if printed, as same is concerning matters filed with the U. S. Supreme Court by appellants, and also matters filed with the Court of Criminal Appeals of Texas, and these matters were placed in said transcript without orders of appellants and charged to them. It is noted that transcript of matters filed with said Court of Criminal Appeals is contained in transcript from that court, and filed herein.

3. Reference is made to affidavit of Justice of Peace, in court below, page 77 of transcript, and statements found in last four lines, stating that their constitutional rights were explained and they each pleaded guilty to the charges as shown by transcripts of docket attached hereto, because such statements are irregular, were entered without permission or knowledge of defense and appellants, and are not matters of confession, evidence or testimony; such a statement entered without authorization of appellants, and at their expense, should not be herein considered, because the defendants were not confronted with such witness or evidence, and had no opportunity to cross-examine and defend. The entire record shows that the Justice Court was not a court of record, that new trial was refused in said County Court, and there is no statement of facts.

4. Referring to transcript, the record concerning bonds for certiorari to justice court, pages 5-6, 20-21, 35-36, and 50-51 show that judge of County Court of Kendall County, Texas, failed to approve said bonds, although same were filed and approved by the sheriff of Bexar County, Texas, at San Antonio, Texas, residence of defendants.

5. The transcript fails to show an appeal bond or recognizance, on date of January 19, 1959, the date of said final order, when motion for rehearing was overruled, and notice of appeal was given, because said judge, on said date, would not take either an appeal bond or recognizance, saying that he did not think it would be needed, whereas, said cases being misdemeanor cases, and said term of court ending on February 2nd, 1959, on or about, the appellants were forced to immediately appeal to the Court of Criminal Appeals of Texas, as shown by the record, and said court, refusing relief, and denying application for certiorari and/or mandamus, on date of January 21, 1959, appellants were forced to apply to the U. S. Supreme Court. It is noted that if no appeal bond, on a misdemeanor case, is perfected and filed during the term of the County Court of Kendall County, as in these cases, the Court of Criminal Appeals cannot acquire jurisdiction on appeal. Note Vernon's Code of Criminal Procedure, Vol. 1, Art. 53, Court of Criminal Appeals, and also Art. 53a, Mandamus, certiorari, and Contempt, in which it is shown that said court had the power and authority to grant the relief which was applied for in these cases, and as indicated in transcript of said Court of Criminal Appeals. Note Vernon's Texas Code of Criminal Procedure, Vol. 3, Title 10, Art. 830, Bail Pending Misdemeanor Appeal.

Wherefore, the said appellants present their supplemental brief herein, and respectfully apply for the consideration of the court, and for justice will ever pray herein.

FLOYD DUKE JAMES,
Attorney for Appellants.

CERTIFICATE OF SERVICE

I, Floyd Duke James, counsel for Appellants, hereby certify that on date of ..... , 1959, I mailed a copy of the foregoing instrument to Respondent, the State of Texas, Honorable Attorney General of the State of Texas, at Austin, Texas.

FLOYD DUKE JAMES,
Majestic Bldg.,
San Antonio, Texas,
Counsel for Appellants.